

Internal Revenue Service

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LEGEND

X =

Y =

State 1 =

State 2 =

Dear :

This letter responds to a letter dated December 16, 2011, and subsequent correspondence, submitted by X's authorized representative requesting rulings under § 7704 of the Internal Revenue Code on behalf of X.

FACTS

According to the information submitted, X is a State 1 corporation and a registered broker-dealer. Y is a State 2 corporation, an FDIC-insured member bank, and an affiliate of X. (This letter shall hereinafter refer to X and Y together as "Y".) Y proposes to operate an auction platform (the "Service") that will facilitate the buying and selling of third party limited partnership interests. Y intends to structure the Service to satisfy the qualified matching service requirements set forth in § 1.7704-1(g) of the

Procedure and Administration Regulations.

The Service is not available to the public. In order to access the Service, a potential seller or buyer of a partnership interest must be an “accredited investor” as defined in the Securities Act of 1933.

Y represents that Service is not: 1) a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (the ‘34 Act); 2) a national securities exchange exempt from registration under section 6 of the ‘34 Act because of the limited volume of transactions; 3) a foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the ‘34 Act; (4) a regional or local exchange; or (5) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

DESCRIPTION OF THE SERVICE

A partner of a partnership may request that the Service serve as a qualified matching service under § 1.7704-1(g) for transfers of partnership interests. The seller may list the interest on the Service by having the interest listed on Y’s website. The seller will list the interest on the Service, and establish an initial nonfirm price quote for the interest.

The Service displays only quotes that do not commit any person to buy or sell an interest at a quoted price (nonfirm price quotes) and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes). The Service will not permit a potential seller of a partnership interest to enter into a binding agreement to sell its interest until after the 15th calendar day after the date (the “Announcement Date”) information regarding an offering of a partnership interest is made available to potential buyers (the “15-day period”). The Service also will not permit the closing of any sale of a partnership interest for at least 45 days after the date information regarding an offering of a partnership interest is made available to potential buyers (the “45-day period”). No payment of purchase proceeds can occur until the end of this 45-day period. Y will maintain contemporaneous records at a central location to document compliance with the requirements of the 15-day and 45-day periods.

For at least 15 days after the Announcement Date (the “Discovery Period”), qualified participants in the Service will have the opportunity to view an interest on the Service on the Service’s website. If the potential seller desires, qualified participants will also have the opportunity to view the interest’s nonfirm minimum asking price. After displaying a listed partnership interest for at least 15 days, Y will conduct a “Dutch auction” for the interest. In no case will the Service permit parties to enter into a binding agreement until after the 15-day period. Any trades executed with respect to a partnership interest will not become effective on the books and records of that

partnership until the end of the 45-day period.

If no trade is executed for a particular interest within 120 calendar days after its listing, the Service will cancel the listing. The Service will not permit the seller to re-list an interest in the same partnership for at least 60 days after this cancellation.

The Service will monitor the transfers it makes with respect to each partnership such that the sum of percentage interests in partnership capital or profits transferred during a taxable year of a partnership (other than private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits.

RULINGS REQUESTED

1) The Service is not a established securities market for the purpose of § 7704 and § 1.7704-1(b).

2) The Service meets the requirements to be a qualified matching service under § 1.7704-1(g).

3) A partnership whose interests are displayed or offered for purchase or sale on the Service will not be considered to be publicly traded solely by reason of being offered for purchase or sale and/or sold through the Service. The partnership may rely on this ruling provided that (a) it is not revoked, (b) that the sum of a partnership's interests transferred during a taxable year of the partnership (other than through private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k), and (c) the Service continues to operate in a manner consistent with the facts as represented. Maintenance of information required to permit a partnership to make the calculations, and the actual making of the calculations, relating to qualification for any applicable safe harbor in § 1.7704-1 will be the sole responsibility of the partnerships whose interests are traded and not the responsibility of Y.

LAW AND ANALYSIS

Section 7704(a) provides that a publicly traded partnership shall be treated as a corporation.

Section 7704(b) provides that for purposes of § 7704, the term "publicly traded partnership" means any partnership if – (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnerships are readily tradable on a secondary market (or the substantial equivalent thereof).

Section 1.7704-1(b) provides, in part, that for purposes of § 7704(b) and

§ 1.7704-1, an established securities market includes – (1) A national securities exchange registered under section 6 of the ‘34 Act; (2) A national securities exchange exempt from registration under section 6 of the ‘34 Act because of the limited volume of transactions; (3) A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the ‘34 Act; (4) A regional or local exchange; (5) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

Section 1.7704-1(c)(1) provides that for purposes of § 7704(b) and § 1.7704-1, interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and paragraph (b) of this section) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

Section 1.7704-1(c)(2) further clarifies that, for purposes of § 1.7704-1(c)(1), interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if – (i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; (ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others; (iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange the interests in the partnership; or (iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of § 1.7704-1(c)(2).

Section 1.7704-1 allows certain types of transfers of partnership interests to be disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof. However, these safe harbors do not apply to any transfers of partnership interests on an established securities market. One of these safe harbors is a qualified matching service under § 1.7704-1(g).

Section 1.7704-1(g)(1) provides that for purposes of § 7704(b) and § 1.7704-1, the transfer of an interest in a partnership through a qualified matching service is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

Section 1.7704-1(g)(2) provides that a matching service is a qualified matching service only if – (i) The matching service consists of a computerized or printed listing

system that lists customers' bid and/or ask quotes in order to match partners who want to sell their interests in a partnership (the selling partner) with persons who want to buy those interests; (ii) Matching occurs either by matching the list of interested buyers with the list of interested sellers or through a bid and ask process that allows interested buyers to bid on the listed interest; (iii) The selling partner cannot enter into a binding agreement to sell the interest until the 15th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location; (iv) The closing of the sale effected by virtue of the matching service does not occur prior to the 45th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location; (v) The matching service displays only quotes that do not commit any person to buy or sell a partnership interest at the quoted price (nonfirm price quotes) or quotes that express interest in partnership interest without an accompanying price (nonbinding indications of interest) and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes); (vi) The selling partner's information is removed from the matching service within 120 calendar days after the date information regarding the offering of the interest for sale is made available to potential buyers and, following any removal (other than removal by reason of a sale of any part of such interest) of the selling partner's information from the matching service, no offer to sell an interest in the partnership is entered into the matching service by the selling partner for at least 60 calendar days; and (vii) The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits.

Section 1.7704-1(g)(4) provides that a qualified matching service may be sponsored or operated by a partner of the partnership (either formally or informally), the underwriter that handled the issuance of the partnership interests, or an unrelated third party. In addition, a qualified matching service may offer the following features – (i) The matching service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; a description of the business of the partnership; financial and reporting information from the partnership's financial statements and reports; and information regarding material events involving the partnership, including special distributions, capital distributions, and refinancings or sales of significant portions of partnership assets; (ii) The operator may assist with the transfer documentation necessary to transfer the partnership interest; (iii) The operator may receive and deliver funds for completed transactions; and (iv) The operator's fee may consist of a flat fee for use of the service, a fee or commission based on completed transactions, or any combination thereof.

CONCLUSIONS

Accordingly, based solely on the submitted facts and representations, we rule as follows:

- 1) The Service is not an established securities market under § 1.7704-1(b).
- 2) The Service meets the requirements to be a qualified matching service under § 1.7704-1(g).
- 3) A partnership whose interests are displayed or offered for purchase or sale on the Service will not be considered to be publicly traded solely by reason of being offered for purchase or sale and/or sold through the Service and may rely on this ruling provided (a) it is not revoked, (b) that the sum of the partnership interests transferred during the taxable year of the partnership (other than through private transfers described in § 1.7704-1(e)) does not exceed 10 percent of the total interests in partnership capital or profits determined as provided in § 1.7704-1(k), and (c) the Service continues to operate in a manner consistent with the facts as represented. Maintenance of information required to permit a partnership to make the calculations, and the actual making of the calculations, relating to qualification for any applicable safe harbor in § 1.7704-1 will be the sole responsibility of the partnerships whose interests are traded and not the responsibility of Y.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of this transaction under any other provisions of the Code.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes